LIBRARY
SUPREME COURT, U.S.

No. 278

Office-Supreme Court, U.S.
FILED
AUG 12 1963
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

CARLOS ESTEVA, JR., *Petitioner,*

vs.

THE HOUSE OF SEAGRAM, INC., *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

ROBERT L. STERN,
PATRICK W. O'BRIEN,
231 South LaSalle Street,
Chicago 4, Illinois,
Attorneys for Respondent.

MAYER, FRIEDLICH, SPIESS,
TIERNEY, BROWN & PLATT,
Of Counsel.

TWENTIETH CENTURY PRESS, INC., CHICAGO 6

No. 278

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

CARLOS ESTEVA, JR., *Petitioner,*

vs.

THE HOUSE OF SEAGRAM, INC., *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

This action, begun in August 1955, was brought to recover $1,000,000 claimed by plaintiff as the measure of defendants' alleged "unjust enrichment" from the use of plans and formulae assertedly originating with plaintiff. The trial commenced on March 12, 1962 against the only defendant served, Browne-Vintners Co., Inc. Delay was experienced in getting the trial under way, and both plaintiff and his counsel were admonished by the Judge to be ready to proceed promptly the next day. On the second day of the trial, the cause was dismissed with prejudice when both plaintiff and his attorney failed to appear. The District Court relied upon *Link* v. *Wabash Railroad Company*, 291 F. 2d 542 (C. A. 7, 1961, aff'd. 370 U.S. 626), a case in which the same attorney had been tardy (A. 33). See also *Jay E. Darlington* v. *Studebaker-Packard Corporation*, 261 F. 2d 903 (C. A. 7, 1959), cert. den. 359 U. S. 992. Prior to the order of dismissal, The House of Seagram, Inc., the surviving corporation of a January 1962 merger, was sub-

stituted for the original defendant, Browne-Vintners Co., Inc. Both are Delaware corporations.

The Court of Appeals affirmed, rejecting summarily plaintiff's belated contention that the substitution of the surviving corporation for the original defendant adversely affected the Court's jurisdiction. (See Pet. p. 6a).

The only point which the petition seems to raise is that the District Court lacked jurisdiction of the subject matter. Petitioner, as plaintiff, originally invoked the diversity jurisdiction of the District Court, asserting that he was a citizen of Puerto Rico and that defendant was a Delaware corporation. The substitution of the successor company, also a Delaware corporation (App. p. 38), did not change the jurisdictional picture. The 1958 amendment to the diversity statute (72 Stat. 415, 28 U.S.C. § 1332), which treats a corporation as also a citizen of the state in which its principal place of business is located, is inapplicable to suits instituted in 1955—and in any event the substituted defendant, The House of Seagram, Inc., is not principally located in Puerto Rico.

The petition for certiorari does not even purport to present a question of importance.

It is respectfully submitted that the petition should be denied.

ROBERT L. STERN,
PATRICK W. O'BRIEN,
231 South LaSalle Street,
Chicago 4, Illinois,
Attorneys for Respondent.

MAYER, FRIEDLICH, SPIESS,
TIERNEY, BROWN & PLATT,
Of Counsel.